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March 23, 2009

Trademark Assistance Center
Madison East
Building Concourse Level
600 Dulaney Street
Room 37A
Alexandria, VA 22314

Re: Notice of Opposition/ Serial No. 77571759

Gentlemen:

Enclosed herewith, please find duly executed original and copy of Notice of Opposition to alleged trademark KLYMAXX, Serial No. 77571759, published on February 24, 2009, Certificate of Mailing , and my check in the amount of \$300.00, payable to the USPTO.

Please acknowledge receipt of the Notice of Opposition on the copy of the letter enclosed herewith, and return the copy to the undersigned in the stamped self-addressed envelop.

Very truly yours,


Jack F. Scherer

JFS:ks
Enclosures



03-24-2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CHERYL COOLEY,

Opposer,

BERNADETTE COOPER and JOYCE IRBY

Applicants.
-----X

NOTICE OF OPPOSITION

In the matter of the application for registration of an alleged trademark
KLYMAXX for entertainment, namely, live performance by a musical band in class 41,
Serial No. 77571759 filed September 17, 2008, by JAMIE SHELDEN, an attorney with
offices now at 201A McCray Street, Suite 306, Hollister, CA 95023-4094, which was
published in the Official Gazette of February 24, 2009, the undersigned CHERYL
COOLEY residing at 5807 Pickford Street, Los Angeles, CA 90019- 4936 believes that
she would be damaged by such registration and hereby gives notice of her intention to
oppose and hereby opposes the registration of said alleged trademark.

Opposer hereby appoints Jack F. Scherer, a member of the Bar of the State of
New York, with offices at 99 Park Avenue, 3rd Floor, New York NY 10016, her attorney
with full power of substitution and revocation for the purpose of opposing such

registration and taking all action required in said proceedings, Please direct all correspondence in this case to Jack F. Scherer at the above identified address.

As grounds for the opposition, it is alleged that:

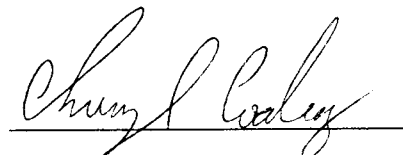
1. Opposer, Cheryl Cooley, is, and for many years has been, performing as Klymaxx, a live musical band.
2. As of January 1, 1981, the live performing band known as Klymaxx which then consisted of Opposer, Lorena Stewart ("Stewart"), Lynn Malsby ("Malsby"), Bernadette Cooper ("Cooper"), one of the Applicants, and three (3) other individuals executed a recording agreement with Solar Records, Inc ("Solar"). The seven, including Opposer, were then known as Klymaxx.
3. Thereafter, as of July 16, 1985, Opposer, the Applicants, Cooper and Joyce Irby ("Irby"), Stewart, Malsby, Robin Grider ("Grider") and one (1) other executed another recording agreement with Solar, distributed by MCA Records ("MCA"). The six were then known as Klymaxx.
4. Opposer, Cooper, Malsby, and Stewart signed both Solar agreements, while Irby and Grider only executed the second Solar agreement.
5. In 1988, both Applicants abandoned Klymaxx to pursue solo musical careers, Cooper with MCA Records, and Irby with Motown Records.
6. Upon the abandonment of Klymaxx by Applicants, Klymaxx consisted of original members, Opposer and Stewart, and Grider, who executed the second Solar agreement.

7. In 1990, Klymaxx, which then consisted of Opposer, Stewart, and Grider, delivered the Klymaxx album entitled "The Maxx Is Back" distributed by MCA.
8. For approximately 10 years, Klymaxx ceased performing.
9. Opposer auditioned musicians in July and August, 2002, and started rehearsing in September, 2002. Opposer performed as Klymaxx on May 17, 2003, in Long Beach, California.
10. Since May 17, 2003, Opposer performed as Klymaxx in California, Arizona, and Florida; and since June 3, 2004, Opposer has performed as "Klymaxx featuring original guitarist Cheryl Cooley" in California, Arizona, Nevada, Pennsylvania, Texas, Alabama, and Tennessee.
11. Opposer is presently performing as "Klymaxx featuring original guitarist Cheryl Cooley".
12. Upon information and belief, more than 15 years after Applicants abandonment of Klymaxx, Applicants' first performance as Klymaxx was on or after November 21, 2003, 6 months after Opposer's first use of Klymaxx.
13. Stewart, Grider and Malsby join with Opposer in the within opposition.
14. Until 2004, none of the original members of Klymaxx had applied to register Klymaxx until Opposer applied under Serial Number 76/498106 which was refused because of the likelihood of confusion with the mark KLIMAX in U.S. registration NO. 2726589.
15. Applicants are not now the owner of the alleged trademark sought to be registered and have not now, and never have had the exclusive use thereof.

The term Klymaxx is not now, and never has been exclusively identified with the Applicants, and the mark sought to be registered does not distinguish the Applicants from Opposer for entertainment, namely live performances by a musical band known as Klymaxx. Malsby, Grider, and Stewart join with Opposer in the within opposition.

By reason of the foregoing facts, Opposer, Malsby, Grider and Stewart will be irreparably damaged by the registration of Applicant's alleged mark and Opposer believes that such registration would deceive the trade and purchasing public in general and cause confusion or mistake or deception.

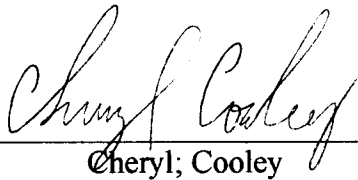
WHEREFORE, Opposer prays that this opposition be sustained, that Serial No. 77571759 be rejected and that registration of the mark shown for entertainment, namely live performances by a musical band be refused and denied.

A handwritten signature in cursive script, reading "Cheryl Cooley", written over a horizontal line.

CHERYL COOLEY

Dated: MARCH 20, 2009

Cheryl Cooley declares that: she has read the foregoing Notice of Opposition and knows the contents thereof, that the same is true to her own knowledge except as to those matters therein stated to be alleged on information and belief, and, as to those matters, she believes them to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom


Cheryl; Cooley

Dated: MARCH 20, 2009

In the United States Patent and Trademark Office

Alleged Mark: Klymaxx

Serial No. 77571759

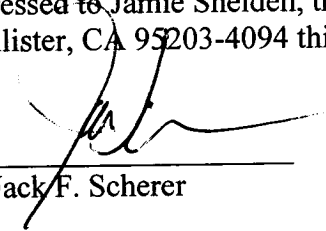
Published: February 24, 2009

Applicants: Bernadette Cooper and Joyce Irby

Opposer: Cheryl Cooper

Certificate of Mailing

I hereby certify that this Certificate, the Letter of Transmittal of even date, and the Notice of Opposition with verification are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelop addressed to Jamie Shelden, the attorney for Applicants, 201A McCray Street, Suite 306, Hollister, CA 95203-4094 this 23rd day of March, 2009.



Jack F. Scherer